

Jason K. Singleton State Bar #166170
Richard E. Grabowski State Bar # 236207
SINGLETON LAW GROUP
611 "L" Street, Suite A
Eureka, CA 95501
lawgroup@sbcglobal.net

(707) 441-1177
FAX 441-1533

Attorney for Plaintiff, JOHN HOPKINS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN HOPKINS,

Plaintiff,

v.

JOHN E. PINCHES, dba CHIEF DRIVE-IN,
and DOES ONE to FIFTY, inclusive,

Defendants.

Case No. C-06-3299 MJJ

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES: DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON IN
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; VIOLATION
OF CALIFORNIA'S CIVIL RIGHTS
STATUTES

JURY TRIAL REQUESTED

Plaintiff JOHN HOPKINS complains of defendants JOHN E. PINCHES, dba CHIEF
DRIVE-IN, and DOES ONE to FIFTY, inclusive, and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 **USC** § 1331 for
violations of the **Americans with Disabilities Act of 1990**, (42 **USC** § 12101, *et seq.*)
Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the
same facts, are also brought under California law, including, but not limited to, violations of
California Health & Safety Code § 19955, *et seq.*, including **California Code of
Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,
54.3 and 55.

2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on

the fact that the real property which is the subject of this action is located in this district, at Laytonville, California, and that Plaintiff's causes of action arose in this district.

INTRODUCTION

3. **CHIEF DRIVE-IN** is located at 44400 North Highway 101, Laytonville, California. Said restaurant is owned and operated by defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**.

Defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**, operate an establishment for services to the public and at which Defendants failed to provide barrier free access to said establishment in conformity with both Federal and California legal requirements. Further, Defendants failed to provide compliance as follows:

- 1) The presented accessible parking space is non-compliant in violation of California Title 24 § 1129B.1 & .4, ADAAG 4.6.
- 2) There is no access aisle serving the non-compliant accessible parking space in violation of California Title 24 § 1129B.4(3), ADAAG 4.6.3*.
- 3) There is no required parking and tow-away signage identifying the accessible parking space in violation of California Title 24 § 1129B.5, ADAAG 4.6.4*.
- 4) There is no accessible signage identifying the primary entrance in violation of California Title 24 § 1127B.3, ADAAG 4.30.7*(1).
- 5) The slope of the exterior landing at the entrance door exceeds the maximum allowable slope in violation of California Title 24 § 1133B.2.4.1, ADAAG 4.13.8*.
- 6) The height of the customer service counter exceeds the maximum allowable height in violation of California Title 24 § 1122B.4, ADAAG 7.2(1).
- 7) The men's restroom is inaccessible in violation of California Title 24 § 1115B.1 & .7.2, ADAAG 4.22.

The above barriers interfered with Plaintiff's access of the facilities and continue to deter Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JOHN HOPKINS** suffers violations of his civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has and will suffer embarrassment and humiliation.

FACTUAL ALLEGATIONS

1
2 4. Plaintiff **JOHN HOPKINS** is, and at all times relevant to this Complaint is, a
3 “physically handicapped person,” “physically disabled person,” and a “person with a
4 disability,” as these terms are used under California law and under federal laws including,
5 but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms
6 “physically handicapped person,” “physically disabled person,” and a “person with a
7 disability” will be used interchangeably throughout this Complaint.) Plaintiff is a “person with
8 a disability,” as defined by all applicable California and United State’s laws. Plaintiff **JOHN
9 HOPKINS** is severely limited in the use of his legs, having had one leg amputated.

10 5. Defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**, at all
11 times relevant herein were and are the owners and operators; lessors and/or lessees,
12 franchisers and/or franchisees, of public facilities known as the **CHIEF DRIVE-IN** located at
13 Laytonville, California, subject to the requirements of California state law requiring full and
14 equal access to public facilities pursuant to ***California Health & Safety Code*** § 19955, *et*
15 *seq.*, ***California Civil Code*** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to
16 Title III of the ***Americans with Disabilities Act of 1990***, and to all other legal requirements
17 referred to in this Complaint. Plaintiff does not know the relative responsibilities of
18 defendants in the operation of the facilities herein complained of, and alleges a joint venture
19 and common enterprise by all such defendants.

20 6. Defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**
21 (hereinafter alternatively referred to collectively as “defendants”), at all times relevant herein
22 were and are owners, possessors, builders and keepers of the **CHIEF DRIVE-IN** in
23 Laytonville, California.

24 7. Defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive** are the
25 owners and operators of the subject **CHIEF DRIVE-IN** at all times relevant to this Complaint.
26 Plaintiff is informed and believes that each of the defendants herein is the agent, employee
27 or representative of each of the other defendants, and performed all acts and omissions
28 stated herein within the scope of such agency or employment or representative capacity and

1 is responsible in some manner for the acts and omissions of the other defendants in legally
2 causing the damages complained of herein, and have approved or ratified each of the acts
3 or omissions of each other defendant, as herein described.

4 8. Plaintiff **JOHN HOPKINS** does not know the true names and capacities of
5 defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**, their business
6 capacities, their ownership connection to the property and business, nor their relative
7 responsibilities in causing the access violations herein complained of, and alleges a joint
8 venture and common enterprise by all such defendants. Plaintiff is informed and believes
9 that each of the defendants herein, including **DOES ONE to FIFTY, inclusive**, is the agent,
10 ostensible agent, master, servant, employer, employee, representative, franchiser,
11 franchisee, joint venturer, partner, and associate, or such similar capacity, of each of the
12 other defendants, and was at all times acting and performing, or failing to act or perform, with
13 the authorization, consent, permission or ratification of each of the other defendants, and is
14 responsible in some manner for the acts and omissions of the other defendants in legally
15 causing the violations and damages complained of herein, and have approved or ratified
16 each of the acts or omissions of each other defendant, as herein described. Plaintiff will
17 seek leave to amend this Complaint when the true names, capacities, connections and
18 responsibilities of defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**, are
19 ascertained.

20 9. Plaintiff is informed and believes that all named defendants, including **DOES**
21 **ONE to FIFTY, inclusive**, conspired to commit the acts described herein, or alternatively,
22 aided and abetted one another in the performance of the wrongful acts hereinafter alleged.

23 10. Defendants **JOHN E. PINCHES and DOES ONE to FIFTY, inclusive**, are the
24 owners and operators of the **CHIEF DRIVE-IN**, located at Laytonville, California. This
25 restaurant, including, but not limited to, parking spaces and access aisles and access routes,
26 are each a part of a "public accommodation or facility" subject to the requirements of
27 **California Health & Safety Code** § 19955, *et seq.*, and of **California Civil Code** §§ 51,
28 52(a), 54, 54.1, *et seq.* On information and belief, this **CHIEF DRIVE-IN** restaurant was

constructed after 1990, which has subjected the **CHIEF DRIVE-IN** restaurant to handicapped access requirements per **California Health & Safety Code** § 19959, and applicable portions of **California Code of Regulations**, Title 24, (the State Building Code).

11. On or about September 6, 2005, Plaintiff **JOHN HOPKINS**, visited the **CHIEF DRIVE-IN** in Laytonville, California for the purpose of obtaining dining. Defendants **JOHN E. PINCHES** and **DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the **CHIEF DRIVE-IN** as set forth in Paragraph 3 above.

Said acts and omissions denied Plaintiff legal accessible access to the **CHIEF DRIVE-IN** according to federal and state law.

12. Plaintiff encountered and/or is informed and believes that the following architectural barriers, which violate the requirements of the **California Code of Regulations** Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those similarly situated full and equal access to the subject public facility as set forth in Paragraph 3 above.

13. Defendants, and each of them, discriminated against Plaintiff **JOHN HOPKINS** on the basis of his physical disability, and interfered with his access to the **CHIEF DRIVE-IN** establishment, in violation of both California law including, but not limited to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision of the **Americans with Disabilities Act of 1990**.

14. As a result of the actions and failure to act of defendants, and each of them, and as a result of the failure to provide appropriate handicapped parking, proper handicapped signage, proper handicapped accessible entryways, and handicapped accommodations for a restaurant, Plaintiff **JOHN HOPKINS** suffered and will suffer a loss of his civil rights to full and equal access to public facilities, and further suffered and will suffer emotional distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public

1 accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction
2 of this court.

3 **I. FIRST CAUSE OF ACTION:**

4 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF 1990***
(42 ***USC*** §12101 *et seq.*)

5 15. Plaintiff repleads and incorporates by reference, as if fully set forth again
6 herein, the allegations contained in paragraphs 1 through 14 of this Complaint and
7 incorporates them herein as if separately replied.

8 16. Pursuant to law, in 1990 the United States Congress made findings per 42
9 ***USC*** § 12101 regarding persons with physical disabilities, finding that laws were needed to
10 more fully protect 43 million Americans with one or more physical or mental disabilities; [that]
11 historically society has tended to isolate and segregate individuals with disabilities; [that]
12 such forms of discrimination against individuals with disabilities continue to be a serious and
13 pervasive social problem; [that] the nation's proper goals regarding individuals with
14 disabilities are to assure equality of opportunity, full participation, independent living and
15 economic self-sufficiency for such individuals; [and that] the continuing existence of unfair
16 and unnecessary discrimination and prejudice denies people with disabilities the opportunity
17 to compete on an equal basis and to pursue those opportunities for which our free society is
18 justifiably famous.

19 17. Congress stated as its purpose in passing the ***Americans with Disabilities***
20 ***Act of 1990*** (42 ***USC*** § 12102):

21 It is the purpose of this act (1) to provide a clear and comprehensive
22 national mandate for the elimination of discrimination against individuals with
23 disabilities; (2) to provide clear, strong, consistent, enforceable standards
24 addressing discrimination against individuals with disabilities; (3) to ensure that
25 the Federal government plays a central role in enforcing the standards
26 established in this act on behalf of individuals with disabilities; and (4) to invoke
the sweep of Congressional authority, including the power to enforce the 14th
Amendment and to regulate commerce, in order to address the major areas of
discrimination faced day to day by people with disabilities.

27 18. As part of the ***Americans with Disabilities Act of 1990***, Public Law 101-336
28 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services

1 Operated by Private Entities” (42 **USC** § 12181 *et seq.*). Among the public accommodations
 2 identified for purposes of this title were “a restaurant, bar, or other establishment serving
 3 food or drink;”

4 19. Pursuant to 42 **USC** § 12182,

5 “No individual shall be discriminated against on the basis of disability in
 6 the full and equal enjoyment of the goods, services, facilities, privileges,
 7 advantages, or accommodations of any place of public accommodation by any
 8 person who owns, leases (or leases to), or operates a place of public
 9 accommodation.”

10 20. Among the general prohibitions against discrimination were included in 42 **USC**
 11 §12182(b)(1)(A)(i):

12 **Denial of participation.** It shall be discriminatory to subject an
 13 individual or class of individuals on the basis of a disability or disabilities of
 14 such individual or class, directly, or through contractual, licensing, or other
 15 arrangements, to a denial of the opportunity of the individual or class to
 16 participate in or benefit from the goods, services, facilities, privileges,
 17 advantages, or accommodations of an entity.

18 21. Among the general prohibitions against discrimination were included in 42 **USC**
 19 §12182(b)(1)(E):

20 **Association** -- It shall be discriminatory to exclude or otherwise deny
 21 equal goods, services, facilities, privileges, advantages, accommodations, or
 22 other opportunities to an individual or entity because of the known disability of
 23 an individual with whom the individual or entity is known to have a relationship
 24 or association.

25 The acts of defendants set forth herein were a violation of Plaintiff’s rights under the ADA,
 26 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 *et seq.*

27 22. Among the general prohibitions against discrimination were included in 42
 28 **USC** § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

Discrimination. For purposes of subsection (a), discrimination includes -

(i) the imposition or application of eligibility criteria that screen out or
 tend to screen out an individual with a disability or any class of individuals with
 disabilities from fully and equally enjoying any goods, services, facilities,
 privileges, advantages, or accommodations, unless such criteria can be shown
 to be necessary for the provision of the goods, services, facilities, privileges,
 advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

23. Plaintiff alleges that constructing the eligibility requirements, policies, practices and procedure for entry to the **CHIEF DRIVE-IN** facility by persons with disabilities and their companions as established by the defendants can be simply modified to eliminate disparate and discriminatory treatment of persons with disabilities by properly constructing barrier free handicapped access for safe and full and equal enjoyment of the **CHIEF DRIVE-IN** as that enjoyed by other people.

24. The specific prohibition against retaliation and coercion is included in the ***Americans With Disabilities Act of 1990*** § 503(b) and the *Remedies and Procedures* in § 503(c):

(b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and Procedure. - The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to Title I, Title II and Title III, respectively.

25. Among the specific prohibitions against discrimination were included, in 42 **USC** § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers that are structural in nature, in existing facilities...where such removal is readily achievable;" and (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable." The acts of Defendants set forth herein were a violations of Plaintiff's rights under the "ADA," Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36, *et seq.*

1 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
2 were at all times after 1990 “readily achievable.” On information and belief, if the removal of
3 all the barriers complained of here together were not “readily achievable,” the removal of
4 each individual barrier complained of herein was “readily achievable.”

5 27. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily
6 accomplishable and able to be carried out without much difficulty or expense.” The statute
7 and attendant regulations define relative “expense” in relation to the total financial resources
8 of the entities involved, including any “parent” companies. Plaintiff alleges that properly
9 repairing each of the items that Plaintiff complains of herein is readily achievable, including,
10 but not limited to, correcting and repairing the items set forth in Paragraph 3 above.

11 The changes needed to remove barriers to access for the disabled were and are
12 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of
13 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
14 defendants to remove all such barriers, defendants have failed to make the required services
15 available through alternative methods, although such methods are achievable as required by
16 42 **USC** §12181(b)(2)(a)(iv), (v).)

17 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
18 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
19 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
20 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
21 grounds for believing that he is about to be subjected to discrimination in violation of
22 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of
23 the public facilities complained of herein for the purpose of entry and provision of goods and
24 service so long as defendants continue to apply eligibility criteria, policies, practices and
25 procedures to screen out and refuse to allow entry and service to persons with disabilities
26 such as Plaintiff’s.

27 29. Defendants’, and each of their acts and omissions of failing to provide barrier
28 free handicapped access for Plaintiff, were tantamount to interference, coercion or

intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** § 12203):

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** § 12188), "Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions." Pursuant to this last section, Plaintiff, on information and belief, alleges that defendants have continued to violate the law and deny the rights of Plaintiff and other disabled persons to access this public accommodation for the purpose of dining. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

"...Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modifications of a policy, or provision of alternative methods, to the extent required by this title."

31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil Rights Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to implement the **Americans with Disabilities Act of 1990**, including, but not limited to, an order granting injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation expenses and costs," are further specifically provided for by §505 of Title III.

WHEREFORE, Plaintiff prays for damages as hereinafter stated.

II. SECOND CAUSE OF ACTION

BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL DISABILITIES (**California Health & Safety Code** § 19955, *et seq.*)

32. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 31 of this Complaint and incorporate them herein as if separately repled.

33. **California Health & Safety Code** § 19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of

Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the *Government Code*. For the purposes of this part “public accommodation or facilities” means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

34. **California Health & Safety Code** § 19956, which appears in the same chapter as §19955, provides in pertinent part, “accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the *Government Code*...” **California Health & Safety Code** § 19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of **CHIEF DRIVE-IN** and/or of its buildings, were constructed and/or altered after July 1, 1970, and substantial portions of said building had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said public accommodations and/or buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health & Safety Code** § 19959.

35. Pursuant to the authority delegated by **California Government Code** § 4450, *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions. Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the California State Architect’s Regulations and these regulations must be complied with as to any alterations and/or modifications of the **CHIEF DRIVE-IN** occurring after that date. Construction changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant to the “ASA” requirements, the **American Standards Association Specifications**, A117.1-1961. On information and belief, at the time of the construction and modification of said building, all buildings and facilities covered were required to conform to each of the standards and specifications described in the **American Standards Association Specifications** and/or those contained in Title 24 of the **California**

1 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

2 36. Public facilities, such as **CHIEF DRIVE-IN** are public accommodations or
3 facilities within the meaning of **California Health & Safety Code** § 19955, *et seq.*

4 37. It is difficult or impossible for persons with physical disabilities who use
5 wheelchairs, canes, walkers and service animals to travel about in public to use a restaurant
6 with the defects set forth in Paragraph 3 above as required by Title 24 of the **California**
7 **Code of Regulations** and the **Americans with Disabilities Act Access Guidelines**
8 **(ADAAG)**. Thus, when public accommodations fail to provide handicap accessible public
9 facilities, persons with physical disabilities are unable to enter and use said facilities, and
10 are denied full and equal access to and use of that facility that is enjoyed by other members
11 of the general public.

12 38. Plaintiff **JOHN HOPKINS** and other similarly situated persons with physical
13 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
14 service animals are unable to use public facilities on a “full and equal” basis unless each
15 such facility is in compliance with the provisions of the **California Health & Safety Code** §
16 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights are protected
17 by the provisions of **California Health & Safety Code** § 19955, *et seq.*

18 39. The **California Health & Safety Code** was enacted “[t]o ensure that public
19 accommodations or facilities constructed in this state with private funds adhere to the
20 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
21 *Code*.” Such public accommodations are defined to include restaurants.

22 40. Plaintiff is further informed and believes that as of the date of filing this
23 Complaint, Defendants have not made accessible the facilities at the subject restaurant as
24 set forth in Paragraph 3 above.

25 41. Plaintiff **JOHN HOPKINS** is informed and believes, and therefore alleges, that
26 Defendants **JOHN E. PINCHES** and **DOES ONE to FIFTY, inclusive**, and each of them,
27 caused the subject buildings constituting **CHIEF DRIVE-IN** to be constructed, altered and
28 maintained in such a manner that persons with physical disabilities were denied full and

1 equal access to, within and throughout said buildings and were denied full and equal use of
2 said public facilities, and despite knowledge and actual and constructive notice to such
3 Defendants that the configuration of the restaurant and/or buildings was in violation of the
4 civil rights of persons with physical disabilities, such as Plaintiff. Such construction,
5 modification, ownership, operation, maintenance and practices of such public facilities are in
6 violation of law as stated in Part 5.5, **California Health & Safety Code** § 19955, *et seq.*,
7 and elsewhere in the laws of California.

8 42. On information and belief, the subject building constituting the public facilities
9 of **CHIEF DRIVE-IN** denied full and equal access to Plaintiff and other persons with physical
10 disabilities in other respects due to non-compliance with requirement of Title 24 of the
11 **California Code of Regulations** and **California Health & Safety Code** § 19955, *et seq.*

12 43. The basis of Plaintiff's aforementioned information and belief is the various
13 means upon which Defendants must have acquired such knowledge, including, but not
14 limited to, this lawsuit, other access lawsuits, communications with operators of other
15 restaurants and other property owners regarding denial access, communications with
16 Plaintiff and other persons with disabilities, communications with other patrons who regularly
17 visit there, communications with owners of other businesses, notices and advisories they
18 obtained from governmental agencies through the mails, at seminars, posted bulletins,
19 television, radio, public service announcements, or upon modification, improvement,
20 alteration or substantial repair of the subject premises and other properties owned by these
21 Defendants, newspaper articles and trade publications regarding the **Americans with**
22 **Disabilities Act of 1990** and other access law, and other similar information. The scope
23 and means of the knowledge of each defendant is within each defendant's exclusive control
24 and cannot be ascertained except through discovery.

25 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
26 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
27 enforce provisions of the law protecting access for persons with physical disabilities and
28 prohibiting discrimination against persons with physical disabilities, and to take such action

1 both in his own interests and in order to enforce an important right affecting the public
2 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable
3 attorneys' fees incurred, pursuant to the provisions of the **California Code of Civil**
4 **Procedure** § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California**
5 **Health & Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.

6 45. Defendants, and each of them, at times prior to and including September 6,
7 2005, and continuing to the present time, knew that persons with physical disabilities were
8 denied their rights of equal access to all portions of this public facility. Despite such
9 knowledge, Defendants failed and refused to take steps to comply with the applicable
10 access statutes; and despite knowledge of the resulting problems and denial of civil rights
11 thereby suffered by Plaintiff **JOHN HOPKINS** and other similarly situated persons with
12 disabilities, including the specific notices referred to in paragraph 43 of this Complaint.
13 Defendants have failed and refused to take action to grant full and equal access to persons
14 with physical disabilities in the respects complained of hereinabove. Defendants and each
15 of them have carried out a course of conduct of refusing to respond to, or correct complaints
16 about, denial of handicap access. Such actions and continuing course of conduct by
17 Defendants, evidence despicable conduct in conscious disregard for the rights or safety of
18 Plaintiff and of other similarly situated persons, justifying an award of treble damages
19 pursuant to **California Civil Code** § 54.3.

20 46. Defendants' actions have also been oppressive to persons with physical
21 disabilities and of other members of the public, and have evidenced actual or implied
22 malicious intent toward those members of the public, such as Plaintiff and other persons
23 with physical disabilities who have been denied the proper access they are entitled to by
24 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
25 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
26 members of the public with physical disabilities.

27 47. Plaintiff prays for an award of treble damages against Defendants, and each of
28 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more

1 profound example of Defendants and discourage owners, operators, franchisers and
 2 franchisees of other public facilities from willful disregard of the rights of persons with
 3 physical disabilities.

4 48. As a result of the actions and failure of Defendants, and each of them, and as
 5 a result of the failure to provide proper accessible public facilities, Plaintiff **JOHN HOPKINS**
 6 was denied his civil rights, including his right to full and equal access to public facilities, was
 7 embarrassed and humiliated, suffered physical, psychological and mental injuries and
 8 emotional distress, mental distress, mental suffering, mental anguish, which includes
 9 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
 10 and naturally associated with a person with a physical disability being denied access to a
 11 public accommodation.

12 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

13 **III. THIRD CAUSE OF ACTION**

14 VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS
 15 (***California Civil Code*** §§ 54, 54.1 and 54.3)

16 49. Plaintiff repleads and incorporates by reference as if fully set forth again
 17 herein, the allegations contained in paragraphs 1 through 48 of this Complaint and
 18 incorporates them herein as if separately repled.

19 50. The public facilities above-described constitute public facilities and public
 20 accommodations within the meaning of ***California Health & Safety Code*** § 19955 *et seq.*
 21 and were facilities to which members of the public are invited. The aforementioned acts and
 22 omissions of defendants, and each of them, constitute a denial of equal access to and use
 23 and enjoyment of these facilities by persons with disabilities, including Plaintiff **JOHN**
 24 **HOPKINS**. Said acts and omissions are also in violation of provisions of Title 24 of the
 25 ***California Code of Regulations***.

26 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and
 27 the denial by defendants of such rights and entitlements are set forth in ***California Civil***
 28 ***Code*** §§ 54, 54.1 and 54.3, to wit:

Individuals with disabilities shall have the same right as the...general

1 public to full and free use of the streets, highways, sidewalks, walkways, public
2 buildings, public facilities, and other public places. **California Civil Code** §
3 54(a).

4 Individuals with disabilities shall be entitled to full and equal access, as
5 other members of the general public, to accommodations, advantages,
6 facilities, and privileges of all common carriers, airplanes, motor vehicles,
7 railroad trains, motor buses, streetcars, boats, or any other public
8 conveyances or modes of transportation (whether private, public, franchised,
9 licensed, contracted, or otherwise provided), telephone facilities, adoption
10 agencies, private schools, hotels, lodging places, places of public
11 accommodation, amusement or resort, and other places to which the general
12 public is invited, subject only to the conditions and limitations established by
13 law, or state or federal regulation, and applicable alike to all persons.
14 **California Civil Code** § 54.1(a).

15 52. On or about September 6, 2005, Plaintiff **JOHN HOPKINS** suffered violations
16 of **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of
17 the goods, services, facilities and privileges of said **CHIEF DRIVE-IN**, as set forth in
18 paragraph 3 above.

19 Plaintiff was also denied full and equal access to other particulars, including, but not
20 limited to, those described hereinabove. Plaintiff was also denied use of facilities that he
21 was entitled to under Title III of the **Americans with Disabilities Act of 1990**.

22 53. As a result of the denial of full and equal enjoyment of the goods, services,
23 facilities and privileges of defendants' **CHIEF DRIVE-IN** due to the acts and omissions of
24 defendants, and each of them, in owning, operating and maintaining this subject public
25 facility, Plaintiff suffered violations of his civil rights, including, but not limited to, rights under
26 **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury,
27 emotional distress, mental distress, mental suffering, mental anguish, which includes
28 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
and naturally associated with a disabled person's denial of full and equal enjoyment of
goods, services, privileges, etc. all to his damages as prayed hereinafter in an amount within
the jurisdiction of the court. Defendants' actions and omissions to act constituted
discrimination against Plaintiff on the sole basis that Plaintiff was physically disabled.

54. Plaintiff seeks damages for the violation of his rights as a disabled person on

1 or about September 6, 2005, according to proof, pursuant to **California Civil Code** § 54.3,
2 including a trebling of all statutory and actual damages, general and special, available
3 pursuant to **California Civil Code** § 54.3(a).

4 55. As a result of defendants' acts and omissions in this regard, Plaintiff **JOHN**
5 **HOPKINS** has been required to incur legal expenses and hire attorneys in order to enforce
6 his rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
7 services, facilities, privileges of public facilities by the disabled, and those individuals
8 associated with or accompanied by a person with disabilities, and prohibiting discrimination
9 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable
10 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 54.3.
11 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
12 Plaintiff, but also to compel the defendants to make their goods, services, facilities and
13 privileges available and accessible to all members of the public with physical disabilities,
14 justifying public interest attorneys' fees pursuant to the provisions of **California Code of**
15 **Civil Procedure** § 1021.5.

16 56. The acts and omissions of defendants in failing to provide the required
17 accessible facilities subsequent to the enactment date and compliance date of the
18 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
19 alterations to its handicapped parking, handicapped signage, pathways, and other elements
20 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's
21 visit and injuries, on or about September 6, 2005, and all times prior thereto with the
22 knowledge that persons with disabilities would enter defendants' premises, the reason given
23 therefor, was an established policy, practice and procedure of refusing and denying entry,
24 thereby denying services to a person with disabilities and the companions thereof, evidence
25 malice and oppression toward Plaintiff and other disabled persons.

26 57. Plaintiff seeks injunctive relief pursuant to **California Civil Code** § 55 to
27 require Defendants to comply with federal and state access regulations.

28 58. Defendants have failed to establish a nondiscriminatory criteria, policy,

1 practice and procedure for entry into said **CHIEF DRIVE-IN** as hereinabove described.

2 59. As a result of defendants' continuing failure to provide for the full and equal
3 enjoyment of goods, services, facilities and privileges of said **CHIEF DRIVE-IN** as
4 hereinabove described, Plaintiff has continually been denied his rights to full and equal
5 enjoyment of the subject restaurant, as it would be a "futile gesture" to attempt to patronize
6 said **CHIEF DRIVE-IN** with the discriminatory policy in place as hereinabove described.

7 60. The acts and omissions of defendants as complained of herein in failing to
8 provide the required accessible facilities subsequent to the enactment date and compliance
9 date of the ***Americans with Disabilities Act of 1990*** and refusal to make remedial
10 modifications and alternations to the architectural barriers as stated herein and in failing to
11 establish practices, policies and procedures to allow safe access by persons who are
12 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
13 excluding Plaintiff and other members of the public who are physically disabled, from full
14 and equal enjoyment of the subject **CHIEF DRIVE-IN** as hereinabove described. Such acts
15 and omissions are the continuing cause of humiliation and mental and emotional suffering of
16 Plaintiff in that these actions continue to treat Plaintiff as an inferior and second class citizen
17 and serve to discriminate against him on the sole basis that he is physically disabled.
18 Plaintiff is unable, so long as such acts and omissions of defendants continue, to achieve
19 full and equal enjoyment of the goods and services of said **CHIEF DRIVE-IN** as described
20 hereinabove. The acts of defendants have legally caused and will continue to cause
21 irreparable injury to Plaintiff if not enjoined by this court.

22 61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any
23 continuing refusal by defendants to permit entry to said **CHIEF DRIVE-IN** and to serve
24 Plaintiff or others similarly situated, and to require defendants to comply forthwith with the
25 applicable statutory requirements relating to the full and equal enjoyment of goods and
26 services as described hereinabove for disabled persons. Such injunctive relief is provided
27 by ***California Civil Code*** § 55. Plaintiff further requests that the court award statutory costs
28 and attorneys' fees to Plaintiff pursuant to ***California Civil Code*** § 55 and ***California Code***

1 **of Civil Procedure** § 1021.5, all as hereinafter prayed for.

2 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
3 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
4 damages.

5 **IV. FOURTH CAUSE OF ACTION**

6 VIOLATIONS OF **UNRUH CIVIL RIGHTS ACT**
7 (**California Civil Code** §§ 51 and 51.5)

8 62. Plaintiff repleads and incorporates by reference, as if fully set forth again
9 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and
10 incorporates them herein as if separately replied.

11 63. Defendants' acts and omissions as specified with regard to the discriminatory
12 treatment of Plaintiff **JOHN HOPKINS** on the basis of his physical disabilities, have been in
13 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have
14 denied to Plaintiff his rights to "full and equal accommodations, advantages, facilities,
15 privileges or services in all business establishments of every kind whatsoever."

16 64. **California Civil Code** § 51 also provides that "[a] violation of the right of any
17 individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall
18 also constitute a violation of this section."

19 65. **California Civil Code** § 51.5 also provides that

20 "[n]o business establishment of any kind whatsoever shall discriminate
21 against, boycott, or blacklist, refuse to buy from, sell to, or trade with
22 any person in this state because of the race, creed, religion, color,
23 national origin, sex, disability of the person or of the person's partners,
24 members, stockholders, directors, officers, managers, superintendents,
25 agents, employees, business associates, suppliers, or customers."

26 66. As a result of the violation of Plaintiff's civil rights protected by **California Civil**
27 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil**
28 **Code** § 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h)
to mean "special and general damages"), as well as reasonable attorneys' fees and costs,
as allowed by statute, according to proof.

WHEREFORE, Plaintiff prays that this court award damages and provide relief as

1 follows:

2 **PRAYER FOR RELIEF**

3 Plaintiff prays that this court award damages and provide relief as follows:

4 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
5 criteria policy, practice and procedure permitting entry into the **CHIEF DRIVE-IN** in
6 Laytonville, California, for the purpose of obtaining the goods and services accorded therein
7 according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and Title
8 III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that
9 Defendants repair and render safe to handicapped persons, and otherwise make
10 handicapped-accessible, all public areas of the restaurant, including, but not limited to, each
11 of the barriers to access identified in Paragraph 3, above, and make such facilities “readily
12 accessible to and usable by individuals with disabilities,” according to the standards of Title
13 24 of the **California Administrative Code, California Health & Safety Code** § 19955 *et*
14 *seq.*, and Title III of the **Americans with Disabilities Act of 1990** and the standards of
15 **ADAAG**; and prohibiting operation of the **CHIEF DRIVE-IN**, located in Laytonville, California,
16 as a public facility until Defendants provide full and equal enjoyment of goods and services
17 as described hereinabove to physically disabled persons, including Plaintiff;

18 2. General damages according to proof;

19 3. Statutory and “actual” damages, including general damages and special
20 damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that
21 these damages be trebled;

22 4. Prejudgment interest on all compensatory damages;

23 5. Remedies and Procedures available under **Americans with Disabilities Act**
24 **of 1990** §§ 107, 203 and 308;

25 6. Award Plaintiff all litigation expenses, all costs of this proceeding and all
26 reasonable attorneys’ fees as provided by law, including, but not limited to, those
27 recoverable pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55,
28 **California Code of Civil Procedure** § 1021.5, and **Americans with Disabilities Act of**

1 **1990** §308 of Title III; and

2 7. Grant such other and further relief as the court may deem just and proper.

3 **SINGLETON LAW GROUP**

4 Dated: May 12, 2006

5 /s/ Jason K. Singleton
6 Jason K. Singleton, Attorney for
7 Plaintiff, **JOHN HOPKINS**

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

10 **SINGLETON LAW GROUP**

11 Dated: May 12, 2006

12 /s/ Jason K. Singleton
13 Jason K. Singleton, Attorney for
14 Plaintiff, **JOHN HOPKINS**
15
16
17
18
19
20
21
22
23
24
25
26
27
28